

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA :
 :
- v. - :
 :
EZRA CHOWAIKI, :
 :
Defendant, :
 :
and :
JEFFREY H. LORIA & CO., INC., :
 :
Petitioner. :
----- X

STIPULATION AND ORDER

18 Cr. 323 (JSR)

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DOC #: _____
DATE FILED: 2/12/19

JED S. RAKOFF, District Judge:

This Stipulation and Order (“Stipulation”) is entered into by and among Jeffrey H. Loria & Co., Inc. (“Loria”), Albert Togut, not individually but solely in his capacity as the Chapter 7 Trustee of the estate of Chowaike & Co. Fine Art Ltd. (the “Trustee”), Art Collection, Inc., (“Art Collection”), and the United States of America, by its attorney Geoffrey S. Berman, United States Attorney, Assistant United States Attorney Daniel M. Tracer, of counsel (“United States”, together with Loria, the Trustee, and Art Collection, the “Parties”);

WHEREAS, on or about May 3, 2018, EZRA CHOWAIKI, (the “Defendant”) was charged in a one-count Information, 18 Cr. 323 (the “Information”), with wire fraud in violation of Title 18, United States Code, Section 1343 (Count One) (Dkt. No. 14);

WHEREAS, the Information included a forfeiture allegation as to Count One of the Information, seeking forfeiture to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) of any and all

proceeds traceable to the commission of the offense charged in Count One of the Information, including all right, title and interest of the Defendant in the following works of art, listed by letters:

- q. Joan Miró – *Untitled*;
- r. Fernand Léger – *Portrait of Mrs. Chester Dale*;
- s. Fernand Léger – *Study for Sao Paolo I*; and
- t. Fernand Léger – *Study for Sao Paolo II*;

(collectively, the “Subject Properties”);

WHEREAS, on or about May 3, 2018, the Defendant pled guilty to Count One of the Information, pursuant to an agreement with the United States, wherein the Defendant admitted the forfeiture allegation with respect to Count One and agreed to forfeit, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), the Subject Properties, among other assets (Dkt. No. 20);

WHEREAS, on or about May 3, 2018, this Court accepted the Defendant’s guilty plea;

WHEREAS, on or about May 16, 2018 this Court entered an Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment which ordered the forfeiture to the United States of all of Defendant’s right, title and interest in the Subject Properties as property that constitutes or is derived from proceeds traceable to the commission of the offense alleged in Count One of the Information (Dkt. No. 19);

WHEREAS, the provisions of Title 21, United State Code, Section 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, require

publication of a notice of forfeiture and of the United States' intent to dispose of the Subject Properties before the United States can have clear title to the Subject Properties;

WHEREAS, the Notice of Forfeiture and the intent of the United States to dispose of the Subject Properties was posted on an official government internet site (www.forfeiture.gov) beginning on July 6, 2018 for thirty (30) consecutive days, through August 4, 2018, pursuant to Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions (*See Declaration of Publication*) (D.E. 80);

WHEREAS, on or about July 3, 2018, Loria filed a verified petition with this Court claiming an ownership interest in the Subject Properties (the "Loria Petition") (Dkt. No. 27);

WHEREAS, on or about July 19, 2018, Art Collection, Inc. filed a verified petition with the Court asserting an ownership interest in, among other properties, the Subject Properties (the "Art Collection Claim") (Dkt. No. 62);

WHEREAS, on or about July 13, 2018, Albert Togut, in his capacity as Chapter 7 trustee of the estate of Chowaiki & Co. Fine Art Ltd. (the "Trustee"), filed an amended petition with this Court (the "Trustee Petition") which 1) stated that the Subject Properties were part of ongoing negotiations between the Trustee and other parties, and 2) reserved the right to supplement the Trustee Petition to assert an interest in the Subject Properties (Trustee Petition ¶30 n. 10) (Dkt. No. 60);

WHEREAS, on or about October 22, 2018, the Trustee filed a Notice of Entry of Bankruptcy Court Order (Dkt. No. 79), requesting that the Court take notice of the Stipulation and Order approved and entered by the United States Bankruptcy Court for the Southern District of New York in the case captioned *In re: Chowaiki & Co. Fine Art Ltd.*, Case No. 17-13228-MKV

(the “Bankruptcy Proceeding”) which 1) barred Art Collection from asserting any interest in or claim to the Subject Properties and 2) amended the Art Collection Petition to waive the Art Collection Claim (Bankruptcy Proceeding, Dkt. No. 124);

WHEREAS, on or about February 1, 2019 the Trustee filed a Notice of Entry of Bankruptcy Court Order (Dkt. No. 106), requesting that the Court take notice of the Stipulation and Order approved and entered by the United States Bankruptcy Court for the Southern District of New York in the Bankruptcy Proceeding, whereby the Trustee waived its interest in three of the Subject Properties, specifically the works of art listed as (q) *Untitled* by Joan Miró, (r) *Portrait of Mrs. Chester Dale* by Fernand Léger, and (t) *Study of Sao Paolo II* by Fernand Léger (together, the “Loria Art”), and requested that title to and possession of the Loria Art be transferred and delivered to Loria (“Bankruptcy Court Stipulation”) (Bankruptcy Proceeding, Dkt. No. 153);

WHEREAS, pursuant to the Bankruptcy Court Stipulation, Loria waived its interest in one of the Subject Properties, specifically the work of art listed as (s) *Study for Sao Paolo I* by Fernand Léger (“*Sao Paolo I*”) and requested that title to and possession of *Sao Paolo I* be transferred and delivered to the Trustee;

WHEREAS, pursuant to Title 21, United States Code, Section 853(n)(2) the deadline to file a petition with the Court asserting a legal interest in the Subject Properties expired on September 4, 2018;

WHEREAS, no claims to the Subject Properties, other than the pending Loria Petition and the waived Art Collection Claim, have been timely filed with this Court;

WHEREAS, the Subject Properties are currently in the custody of the Federal Bureau of Investigation (“FBI”);

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the United States of America, by its attorney Geoffrey S. Berman, United States Attorney, Assistant United States Attorney Daniel M. Tracer, of counsel, Loria and its counsel, Melvyn R. Leventhal, Esq., the Trustee and his counsel, Neil Berger, Esq., and Art Collection, and its counsel Malcolm Taub, Esq. that:

1. This Stipulation and Order constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Stipulation and Order shall be enforceable.

2. The United States recognizes Loria's superior right, title and interest in the Loria Art pursuant to Title 21, United States Code, Section 853(n)(6)(A) and hereby agrees that it will not seek to forfeit the Loria Art or otherwise include the Loria Art in a final order of forfeiture. Accordingly, the United States will release the Loria Art to the possession of Loria.

3. The United States recognizes the Trustee's superior right, title and interest in the work of art *Sao Paolo I* pursuant to Title 21, United States Code, Section 853(n)(6)(A) and hereby agrees that it will not seek to forfeit *Sao Paolo I* or otherwise include *Sao Paolo I* in a final order of forfeiture. Accordingly, the United States will release *Sao Paolo I* to the possession of the Trustee.

4. The Art Collection Claim to the Subject Properties is hereby dismissed with prejudice.

5. The Loria claim to *Sao Paolo I* is hereby dismissed with prejudice. Any reservation of rights set forth in the Trustee Petition regarding the Loria Art are hereby withdrawn and dismissed with prejudice.

6. Loria hereby accepts all responsibility for collecting the Loria Art from their storage location at Day & Meyer, Murray & Young Corp., 1166 2nd Avenue, New York, New York at a time mutually agreed upon by Loria and the FBI, and further accepts all responsibility for any preparation of the Loria Art for transportation or shipment, including but not limited to any necessary wrapping or crating.

7. The Trustee hereby accepts all responsibility for collecting the *Sao Paolo I* from its storage location at Day & Meyer, Murray & Young Corp., 1166 2nd Avenue, New York, New York at a time mutually agreed upon by the Trustee and the FBI, and further accepts all responsibility for any preparation of *Sao Paolo I* for transportation or shipment, including but not limited to any necessary wrapping or crating.

8. The Parties hereby agree to waive all rights to appeal or otherwise challenge or contest the validity of this Stipulation and Order.

9. Loria agrees to hold harmless the United States of America ("USA"), the Department of Justice ("DOJ"), the United States Attorney's Office – SDNY ("USAO"), the United States Marshals Service (USMS), and the FBI, or any and all employees, officers, and agents of the USA, the DOJ, the USAO, the USMS, and the FBI, as well as local and state agents, officers or employees, past and present, from any and all claims arising from any acts, incidents, or occurrences in connection with the seizure, possession and/or return of the Loria Art, including but not limited to any third-party claims of ownership of the Loria Art.

10. The Trustee agrees that it will not assert any claims against the United States of America (“USA”), the Department of Justice (“DOJ”), the United States Attorney’s Office – SDNY (“USAO”), the United States Marshals Service (“USMS”), or the FBI, or any employee, officer, or agent of the USA, the DOJ, the USAO, the USMS, or the FBI, or any local and state agents, officers or employees, past and present, for any claims arising from any acts, incidents, or occurrences in connection with the seizure, possession and/or return of , including but not limited to any third-party claims of ownership of *Sao Paolo I*.

11. The Parties hereby agrees to waive all rights to appeal or otherwise challenge or contest the validity of this Stipulation and Order.

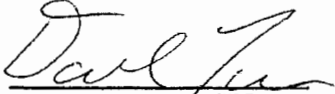
12. Loria and the Trustee agree that they are not entitled to attorney’s fees or an award of any other costs associated with their claims to the Subject Properties.

13. The signature pages of this Stipulation and Order may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The signature pages may be transmitted by fax or by electronic file in PDF format, and such signatures shall be deemed equivalent to valid originals.

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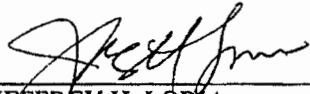
AGREED AND CONSENTED TO:


GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: 
DANIEL M. TRACER
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Tel.: (212) 637-2329

2/7/19
DATE

JEFFREY H. LORIA & CO., INC.

By: 
JEFFREY H. LORIA

By: 
MELVYN R. LEVENTHAL, ESQ.
(Counsel for Jeffrey H. Loria & Co., Inc.)
488 Madison Avenue, 22nd Floor
New York, NY 10022
(212) 935-0800

2-15-2019
DATE

2/6/2019
DATE

ART COLLECTION, INC.

By: _____
ELY SAKHAI

By: _____
MALCOLM TAUB, ESQ.
(Counsel for Art Collection, Inc.)
605 Third Avenue
New York, NY 10158
(646) 428-3283

DATE

DATE

AGREED AND CONSENTED TO:

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: DANIEL M. TRACER
Assistant United States Attorney
One St. Andrew's Plaza
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Tel.: (212) 637-2329

DATE

JEFFREY H. LORIA & CO., INC.

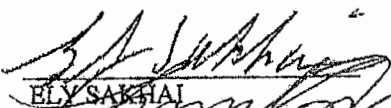
By: JEFFREY H. LORIA

DATE


By: MELVYN R. LEVENTHAL, ESQ.
(Counsel for Jeffrey H. Loria & Co., Inc.)
488 Madison Avenue, 22nd Floor
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DATE

ART COLLECTION, INC.

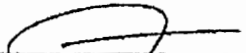
By: 
ELY SAKHAR

FEB 5 19
DATE

By: 
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605 Third Avenue
New York, NY 10158
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2/5/19
DATE

ALBERT TOGUT, Chapter 7 Trustee of the Estate of Chowaike & Co. Fine Art Ltd.

By: 
NEIL BERGER, ESQ.
(Counsel for the Trustee)
Togut, Segal & Segal LLP
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New York, NY 10119
(212) 594-5000

2-6-19
DATE

SO ORDERED:


HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

2/12/19
DATE